

COMMONWEALTH OF MASSACHUSETTS
COMMISSION AGAINST DISCRIMINATION

MCAD and WILLIAM H. ARMSTRONG,
Complainants

v.

Docket No. 07-BEM-00987

BOSTON COLLEGE,
Respondent

Appearances:

For Complainants: William Green, Esq. assisted by Daniela Sorokko, MCAD intern

For Respondent: Alan D. Rose, Esq. and R. Victoria Fuller, Esq.

DECISION OF THE HEARING OFFICER

I. PROCEDURAL HISTORY

On April 18, 2007, William Armstrong ("Complainant") filed a complaint with the Massachusetts Commission Against Discrimination ("MCAD") charging that Respondents Boston College and Chemistry Department Chair Amir Hoveyda¹ discriminated against him on the basis of disability² by taking the following actions: refusing to allow him to attend Chemistry Department meetings, social functions, and recruitment meetings after his return to campus from a 2002-2003 leave; refusing to allow him to participate in decision-making regarding the purchase of shared departmental instrumentation; taking him off the Chemistry Department email list; taking steps to move his office and lab space out of the Chemistry Building, transferring

¹ Respondent Hoveyda was dismissed from the case prior to the public hearing.

² The discrimination claim was dismissed by the MCAD as lacking probable cause.

administrative oversight of his research and grant activities to the Biology Department; transferring the determination of his salary to the Dean of the College of Arts and Sciences; omitting his name from a 2006 brochure of Chemistry Department faculty; and prohibiting him from teaching courses for chemistry majors. On February 7, 2008, Complainant filed an amendment to his charge of disability discrimination, adding a charge that Respondents retaliated against him for pursuing a faculty grievance against the Chemistry Department. The amendment was granted by the Investigating Commissioner on May 6, 2008.

On March 15, 2010, rulings were issued by the Investigating Commissioner finding a lack of probable cause to support the disability discrimination charge but concluding that there was probable cause to support the retaliation charge. The case was certified for a public hearing on March 8, 2013.

The public hearing began on July 21, 2014. It consisted of eleven (11) days of hearing. The following witnesses testified: Professors David McFadden, Michael Clarke, Cutberto Garza, Amir Hoveyda, Arthur Madigan, Stephen Lippard, Richard Holm, Mary Roberts, Lawrence Scott, and Larry McLaughlin; Dr. Clifford Briggin, Father William Leahy, Complainant, and his wife. The parties submitted one hundred twenty-two (122) agreed-upon exhibits. Complainant submitted an additional eight (8) exhibits and Respondent submitted an additional eleven (11) exhibits. The parties submitted post-hearing briefs.

Following the public hearing, Complainants moved to substitute a revised version of their post-hearing brief in place of the original version. This motion was allowed over Respondent's objection on May 29, 2015 on the basis that: 1) the fifty-page limit on post-

hearing briefs is a guideline, not a requirement and 2) the scope of protected activity is defined by the evidence presented at the hearing rather than by preliminary allegations set forth in the initial charges.

Based on all the relevant, credible evidence and the reasonable inferences drawn therefrom, I make the following findings and conclusions.

II. FINDINGS OF FACT

1. Complainant received his Ph.D. from Stanford University in inorganic chemistry in the 1980s. As a graduate student, he worked under Dr. Richard Holm who later served as Chair of the Chemistry Department at Harvard University. Transcript IX at 1616. Dr. Holm described Complainant as a “very hard working, very insightful guy” who generated important publications. Transcript IX at 1617-1618. Complainant began his postdoctoral work at Columbia University under Dr. Stephen Lippard.³ As a postdoctoral student, Complainant transferred to MIT where he continued to work with Dr. Lippard at the “interface of inorganic chemistry and biology,” made an “incredibly wonderful” discovery which Dr. Lippard referred to as the “Armstrong di-iron unit” and published “wonderful work.” Transcript IX at 1566-1567, 1601. Complainant subsequently joined the faculty of the University of California at Berkeley. He was turned down for tenure at Berkeley and joined the Chemistry Department of Boston College in 1992 as an associate professor. Complainant received tenure two years later from Boston College.
2. In the fall of 1996-1997 academic year, Complainant submitted an application for promotion to full professor at the suggestion of then-Chemistry Department Chair

³ Dr. Lippard is the Arthur Amos Noyes Professor of Chemistry at MIT and was Chair of MIT’s Chemistry Department for ten years. Transcript IX at 1.

Paul Davidovitz. Transcript III at 490. Complainant was not approved for promotion. He was told by a colleague that Professor Amir Hoveyda played a significant role in the rejection of his application. Transcript III at 492.

3. In 1997, Complainant first exhibited signs of mental illness that impacted his professional activities. He has a family history of mental illness. Joint Exhibit 19, p.2. His brother committed suicide when Complainant was in college. Id. Complainant became severely depressed, started to drink heavily, began to go to strip clubs, and drove drunk for which he was arrested. Transcript I at 100, III at 482-483.
4. Complainant was unable to complete two courses during the 1999-2000 academic year due to mental health issues. Joint Exhibits 21, 120. Fellow members of the Chemistry Department completed Complainant's courses for him. Transcript III at 483; Joint Exhibit 120.
5. David McFadden is a tenured full Professor of Chemistry at Boston College. He served as Chemistry Department Chair from 1989-1992 and from 2001-2004. Transcript II at 161-163. Professor McFadden testified that he played golf with Complainant during the first several years that Complainant was in the Chemistry Department. Transcript II at 176. At some point, Complainant asked Professor McFadden for a psychiatric referral from Professor McFadden's wife who is a psychiatrist. Transcript II at 178. She provided the name of Dr. Clifford Briggin. Id. at 179.
6. Dr. Briggin testified that he has treated Complainant since July of 2001. He diagnosed Complainant with Bipolar II which he described as a major psychiatric illness characterized by severe depression and hypomanic episodes. Dr. Briggin

defined hypomania as a form of mania characterized by irresistible impulses that are outside of a person's normal behavior, by impaired judgment, and by lack of impulse control. Dr. Briggan described Complainant's illness as predominantly genetic, noting his brother's suicide and his father having suffered from the same condition.

7. In April of 2001, then-Chair of the Chemistry Department Larry McLaughlin nominated Complainant for a "Research Opportunity Award." Joint Exhibits 2 & 3. Chair McLaughlin did so despite complaints from one or two students during the prior three years about Complainant's teaching. Transcript X at 1799; Joint Exhibit 1. Research Opportunity Awards are intended to re-activate the research of mid-career faculty members whose research has decreased over time. Transcript X at 1800. Salary records from January of 2001 state that, "[Complainant] is still recovering from his mental relapse a year ago and the department tries to be understanding." Joint Exhibit 121.
8. In November of 2001, Complainant was awarded a Research Opportunity Award of \$50,000. Joint Exhibit 4. Professors McFadden and Kelley assisted Complainant in preparing the application for the grant because Complainant had failed to complete previous grant applications. Transcript II at 328, IV at 590-591.
9. Complainant did not teach during the spring semester of 2002 due to multiple complaints about the manner in which he taught Principles of Inorganic Chemistry in the fall of 2001. Joint Exhibits 21, 121; Transcript II at 324, IV at 591, VIII at 1440-1441. Students complained about classes being cancelled, the syllabus not being followed, exams being postponed, homework and term paper topics not being reviewed, classes being presented in a disorganized fashion, explanations not being

clear, and grades not being turned in on time. Joint Exhibit 121. Then-Chemistry Chair David McFadden noted that Complainant was untruthful about turning in grades. Id. The Chair also expressed concern about the supervision and safety of undergraduate and graduate students in Complainant's laboratory. Id.

10. In 2002, the Chemistry Department was conducting a nationwide search for a new faculty member. At the urging of Boston College Chemistry Professor Amir Hoveyda, the Department was seeking to hire Dr. John Wolfe, a postdoctoral fellow from the University of California, Irvine. Transcript II at 182. On February 21, 2002, Complainant sent out e-mails under the assumed name of James Lichter to Dr. Wolfe, "warning" him that if he were to accept an offer from Boston College, he would find "AH" to be "ruthless, vicious, manipulative, intimidating, vindictive, deceptive, subversive, mean-spirited, insincere, two-faced, hot-headed, excessively self-promoting, predatory, an extreme aggressor, scientifically narrow-minded, derogatory, polarizing, intrusive, obnoxious, overbearing, over-controlling, power-hungry, resource-plundering, underhanded, dictatorial, vitriolic, conniving, profane, Machiavellian, and disruptive." Respondent's Exhibit 1. Complainant stated that "AH" would go out of his way to harm the reputations of those who stood against him or whom he looked down upon. Id. Complainant also sent out e-mails under the name of James Lichter to seven faculty members of the Chemistry Departments of Yale and the University of Michigan (institutions which were also trying to recruit Dr. Wolfe) in which he charged that that "AH" was using smear tactics against their schools and faculties in order to get Dr. Wolfe to join the Boston College faculty. Respondent's Exhibit 2; Joint Exhibits 10 & 117; Transcript VI at 1040-1041.

Complainant acknowledges that in referencing "AH" he was referring to Professor Hoveyda. According to Complainant's psychiatrist Dr. Briggin, the origin of Complainant's dislike for Professor Hoveyda was his belief that Professor Hoveyda had blocked his application for full professorship. Transcript I at 145.

11. During an ensuing investigation into the e-mails, the administration learned that Complainant had been keeping a private log for four years in which he ranted about Professor Hoveyda. Respondent's Exhibit 3; Transcript III at 494. In the log, Complainant referred to himself as a "self-appointed watchdog" and to Professor Hoveyda as exercising "brainwashing effects." Id. There is no evidence that Complainant shared the log with anyone else.
12. At the time that Complainant sent out the e-mails under the fictitious name of James Lichter, he was being treated by Dr. Briggin and Dr. Blake Smith, a psychopharmacologist. Transcript VI at 1038. Dr. Briggin testified that when Complainant sent out the anonymous e-mails, he was taking Prozac which Dr. Briggin described as the wrong medication for Bipolar II because it increased Complainant's irritability and failed to help with depression over the long term. In September of 2001, Complainant started taking Lamictal, which calmed him down and ameliorated his depression. Transcript VI at 1039. Beginning in January of 2002, Complainant's dose of Prozac/Effexor was phased out. Transcript III at 506-507. Complainant stated that the change in medication caused his mood swings to lessen and his depression to decrease, albeit with some flattening out of vitality. Id., Transcript IV at 584. As of the date of public hearing, Complainant was taking 300 mg of Lamictal twice a day. Transcript IV at 585.

13. On June 13, 2002, Boston College and Complainant entered into a written agreement providing that Complainant would take a paid leave of absence for one year (academic year 2002-2003) during which he would not enter the Boston College campus. Joint Exhibit 10. The agreement provided that during the leave of absence, Complainant would perform all academic work away from the Boston College campus and clear all contact with Boston College personnel through designated individuals, would make written apologies, and would submit to an evaluation by an independent medical examiner concerning his fitness to return to work. The 2002 agreement states that, “[a]ny further restriction of Professor Armstrong’s teaching or duties as a tenured faculty member must be by further agreement between the parties, or based upon Professor Armstrong’s conduct after the execution of this agreement.”

Id. Boston College President Father William Leahy testified that he made the decision not to dismiss Complainant because he “had difficulties in his life, obviously under great stress. We’re an institution that comes out of Christian Catholic context. I believe people can make mistakes and recover from them . . . I didn’t think it was the right thing to do. I thought there were possibilities of helping him regain some equilibrium in his life” Transcript XI at 1988.

14. During the 2002-2003 academic year while Complainant was on leave, he continued to receive medical treatment from Dr. Smith and psychotherapy from Dr. Briggan. Transcript III at 505.

15. Chemistry Department Professor David McFadden was Department Chair for academic years 2001-2002 through 2005-2006. Transcript II at 177, 222, 309. He testified that Complainant’s leave during the 2002-2003 academic year and his return

to campus in 2003-2004 were handled by Deans Joseph Quinn⁴ and Michael Smyer⁵ of the College of Arts and Sciences. Transcript II at 196-197, 205, V at 929.

16. Professor McFadden believed Complainant should have been permanently removed for committing an “act of sabotage” and a breach of trust which he deemed to be unrelated to Complainant’s mental health. Transcript II at 198-207, 319-320.

Professor McFadden characterized the administration’s handling of the situation as constituting “half-measures.” Joint Exhibit 117. Professor McFadden testified that everybody in the Chemistry Department was shocked and angry at the situation and could not tolerate working with Complainant. Transcript II at 185-186, 214-215.

Professor McFadden characterized Complainant’s apologies to the faculty as inadequate insofar as accepting personal responsibility for his prior actions.

Transcript II at 254, 337-338.

17. Pursuant to a June 26, 2003 agreement signed by Dean Michael Smyer of the Graduate School of Arts and Sciences on behalf of Boston College, Complainant was cleared to return to work at Boston College for the 2003-2004 academic year. Joint Exhibit 18. The agreement provided that Complainant’s office would be outside of the Merkert Chemistry Center during the 2003-2004 academic year, his lab space would in a Merkert lab previously used for teaching undergraduates, he would be permitted to recruit graduate and undergraduate students for research purposes, he would only teach the course “Chemistry and Society” in academic year 2003-2004, he would not attend regular Chemistry Department faculty meetings during 2003-2004 unless

⁴ Dean Quinn was the Dean of the Undergraduate College of Arts and Sciences. Transcript VIII at 1481-1482.

⁵ Dean Smyer was the Dean of the Graduate School of Arts and Sciences. Transcript VIII at 1481.

invited by the Chair but would be allowed to attend departmental seminars, and he would have a mentor. Id.; Complainant's Exhibit 4, p.2; Transcript II at 279, 340, III at 517-518. The agreement was "subject to further discussion and amendment, as circumstances at the time may warrant." Joint Exhibit 18. The agreement was approved by Father Lahey, President of Boston College, and by Dr. Neuhauser, Vice President for Academic Affairs. Transcript III at 525.

18. In fulfillment of the requirement that Complainant receive an evaluation by an independent medical examiner concerning his fitness to return to work, Dr. Charles Swearingan drafted a report dated July 23, 2003. Joint Exhibit 19. Dr. Swearingan was a psychiatrist mutually selected by the parties to evaluate Complainant's fitness. He determined that Complainant was fit to return to duty based on numerous interviews and a battery of psychiatric tests. Id.
19. Complainant returned to campus for the 2003-2004 academic year. At its conclusion, Complainant sought to move his office back into the Merkert Chemistry Center. Chemistry Chair McFadden told him that wasn't possible. Id.; Joint Exhibit 117.
20. Complainant sought to be relieved of teaching "Chemistry in Society" during academic year 2004-2005, but Professor McFadden denied the request because Complainant "seemed to be going okay" in that assignment and because he had previously been unsuccessful teaching CH 520, an upper-level course. Transcript II at 344, 347, 350, VI at 1121-1124; Joint Exhibit 21.⁶ During that year, Complainant gave several talks at

⁶ In subsequent years, Complainant continued to teach "Chemistry in Society" as well as a research course consisting of advising one or two undergraduate students in their research projects and "Chemistry for Life Sciences," a support course for the nursing school. Transcript II at 687-688, VI at 1120-1122. During 2013-2014, he taught two courses in the fall and one in the spring. Id.

other schools and published a “number” of papers. Transcript III at 532. He stated that in 2004-2005, “things started to really get back on track” in terms of his research.

Transcript III at 532.

21. During 2004-2005, Complainant founded an organization called the Boston Regional Inorganic Chemists (“BRIC”). The group consists of inorganic chemistry students, postdoctoral associates, and faculty. It holds meetings three times a year at various universities in and around Massachusetts at which faculty members present their research, students present posters, and members interact, collaborate, and recruit. Transcript III at 528-529. Dr. Lippard described BRIC as having a “very important function” and Dr. Holm described BRIC as a “very original” and “excellent” idea. Transcript IX at 1581, 1621.

22. On February 15, 2005, Complainant conducted an interview of a potential addition to the Chemistry Department faculty, Dr. James Morken. Complainant Exhibit 7; Transcript III at 562-563, X at 1924-1925. Most if not all available members of the Chemistry Department faculty interviewed Dr. Morken over a two-day period.

23. On April 15, 2005, Complainant attended a Chemistry Department faculty meeting with the permission of then-Chemistry Chair McFadden. Id.; Joint Exhibit 117.

Professor McFadden testified that he allowed Complainant to attend the meeting after Deans Smyer and Quinn said that the College of Arts and Sciences wanted to reinstate Complainant into the Chemistry Department. Transcript II at 229. When the meeting started, Complainant began to take notes whereupon faculty members left the room. Transcript II at 230-231; Joint Exhibit 35. The faculty was upset at Complainant for

taking notes at the meeting because of the private log which Complainant formerly had kept in which he disparaged the Chemistry Department and because the Chemistry faculty distrusted him. Transcript II at 230-232. Following the meeting, Professor McFadden told Complainant that he had to stop attending faculty meetings. Complainant initially agreed, but subsequently changed his mind when denied a timetable for resuming his attendance. Joint Exhibits 36, 117.

24. According to Dr. Lippard, Chair of MIT's Chemistry Department for ten years, he has never excluded a colleague from a faculty meeting and described such an action as "unheard of." Transcript IX at 1573-1574.
25. At the end of the 2004-2005 academic year, Complainant again sought to move his office back to the Merkert Chemistry Center, asking Chemistry Chair McFadden periodically when he could do so. Transcript III at 533. Deans Quinn and Smyer told various members of the Chemistry Department that Complainant needed to be reintegrated into the Chemistry Department in furtherance of the administration's objective to reinstate Complainant into the life of the Department. Joint Exhibit 42; Transcript II at 229-230, 280-282. In response, Chair McFadden arranged to move Complainant's office back into Merkert. Id.; Joint Exhibit 117.
26. Complainant e-mailed Dean Smyer in October of 2005 to inquire about when he could again attend regular faculty meetings. Joint Exhibit 28. Deans Quinn and Smyer met with Professors Davidovitz and Scott about reintegrating Complainant into the Chemistry Department. Joint Exhibit 119.

27. On November 1, 2005, Dr. Cutberto Garza was appointed Academic Vice President of Boston College. Transcript XI at 1999. He became Provost about six months later, reporting directly to President Leahy as chief academic officer of the University. Transcript V at 806-807, XI at 2024.
28. Professor Hoveyda e-mailed Chemistry Department Chair McFadden and Department Administrator Donna Ticchi on December 16, 2005 to assert that Complainant's attendance at Chemistry Department faculty meetings would be "out of the question" when he became chairperson. Joint Exhibit 29.
29. Complainant e-mailed Deans Smyer and Quinn on December 30, 2005 to inform them that he planned to start attending faculty meetings. Joint Exhibit 30.
30. In January of 2006, Complainant received a three-year National Science Foundation grant of \$423,000. Transcript III at 424-425; Joint Exhibit 33. A grant of that size is considered "substantial." Transcript V at 873. Complainant submitted several versions of the proposal prior to receiving it, one of which was signed by the Chairman of the Biology Department because the Chairman of the Chemistry Department would not sign it. Transcript III at 532-534, 547.
31. Complainant attended a Chemistry Department faculty meeting on February 6, 2006. Joint Exhibit 35. The meeting was held to discuss the hiring of candidates for the Chemistry Department who were former students of Professor Hoveyda, but Complainant did not know the topic of the meeting prior to attending. Transcript III at 410, 446-447, VI at 1011. Complainant attended the meeting at the suggestion of Chemistry Department Professor Michael Clarke. Transcript III at 409. Upon seeing Complainant, Professor Hoveyda walked out of the room, followed by other faculty

members. Transcript III at 411, VI at 1012, VII at 1355-1356. The remaining faculty discussed the situation. Several individuals complained about Complainant being in the room and stated that he should have been fired. Transcript III at 412. Professor Clarke took the opposite view, remarking that some of the individuals who walked out should themselves have been fired because "lots of people have histories." Id.

Professor Clarke acknowledged that he "probably" called Chemistry Chair McFadden a coward at the meeting. Transcript III at 448; VI at 1013.

32. Chair McFadden e-mailed Provost Garza on the evening of February 6, 2006 about events which took place earlier that day and stated that "most of the faculty are convinced that Hoveyda cannot be chairman while Armstrong is in the department." Joint Exhibit 115.

33. On the following day, the Chemistry Department's tenured faculty, except for Complainant and Professor Clarke, met and voted unanimously in favor of two resolutions: 1) calling for Complainant to be banned from all future Chemistry Department faculty meetings and 2) calling for the termination of Complainant's appointment in the Chemistry Department. Joint Exhibit 37; Transcript II at 261.

34. Between February 6 and 10, 2006, Provost Garza met with Dean Quinn of the Undergraduate Program for Arts and Sciences. Transcript V at 825. They discussed the 2002 agreement between the University and Complainant and the difficulty of reintegrating Complainant into the Chemistry Department due to Complainant having lost the faculty's trust and respect. Transcript V at 828-31. According to Provost Garza, whatever "détente" existed between Complainant and the Chemistry faculty

- began to “unravel” as a result of Complainant’s attendance and behavior at the February 6, 2006 Chemistry Department faculty meeting. Transcript V at 834.
35. In a February 10, 2006 letter to Provost Garza, Chair McFadden laid out a history of Complainant’s dispute with the Chemistry Department. Joint Exhibit 39/117.
36. Complainant e-mailed Chair McFadden on February 11, 2006 to announce that he intended to attend every faculty meeting in the future. Joint Exhibit 40.
37. In a February 16, 2006 e-mail to Provost Garza, Chemistry Chair McFadden reported that Chemistry Professors Paul Davidovits and Larry Scott had met with Deans Quinn and Smyer several months previously to discuss Complainant’s full reintegration into the Chemistry Department and that Dean Smyer had sought to move the reintegration ahead. Joint Exhibit 119.
38. On February 23, 2006, Complainant met with Provost Garza. Respondent’s Exhibit 5. During the meeting, Provost Garza asked Complainant not to attend future Chemistry Department faculty meetings and informed Complainant that, in the future, he would be reporting to someone other than the Chair of the Chemistry Department. Provost Garza stated that the school’s administrators could not force the Chemistry Department to accept Complainant as a colleague, “nor would it be wise to try.” Respondent’s Exhibit 5; Transcript VI at 1015. Complainant reluctantly agreed to the request that he not attend faculty meetings. Joint Exhibit 43.
39. Dr. Garza testified at the public hearing that members of the Chemistry Department felt excluded from decisions that were made in 2002 in response to Complainant’s anonymous e-mails and objected to the “top down” manner in which the administration had dealt with Complainant. Transcript V at 965.

40. On February 24, 2006, Complainant sent confidential correspondence to Deans Smyer and Quinn voicing his opposition to Professor Hoveyda becoming the next Chemistry Department Chair. Complainant described Professor Hoveyda's behavior as "an abomination" and characterized him as a "workplace bully," someone who "berated students and staff members ruthlessly," had difficulty controlling his anger, was "manipulative and devious," and may have engaged in "underhanded" financial dealings based on a claim by a "colleague" (subsequently identified as Professor Michael Clarke). Joint Exhibit 122; Transcript VI at 1062-1067. Complainant claimed that Professor Hoveyda "disrupted collegiality" and was "not a peacemaker." Id.

41. On April 21, 2006, Provost Garza sent an e-mail to Complainant denying him financial support for an undergraduate summer student on the basis that Complainant should be focusing on endeavors that would produce publications or advancements in research. Respondent's Exhibit 6; Transcript V at 981. Notwithstanding this position, Complainant received summer funding for an undergraduate student from Dean Quinn. Joint Exhibits 46-47.

42. At an April, 2006 meeting on Merkert infrastructure issues attended by Provost Garza, Space Committee Chair McLaughlin expressed the opinion that Chemistry Department faculty labs should be kept together in one building. Joint Exhibit 44. However, during the following month, Provost Garza told Complainant that his office and lab would be moved out of Merkert. Dr. Garza testified at the public hearing that it was clear by that time that such a move was the "best option for everyone involved." Transcript V at 982-984. According to Dr. Lippard, Complainant's physical

separation from the Chemistry Department was “devastating” to him because visibility and presence is necessary in order to attract graduate students, interact with visiting scientists, and weigh in on departmental matters. Transcript IX at 1574-1575.

43. On May 4, 2006 and on May 13, 2006, Complainant e-mailed Dean Smyer that Provost Garza supported Chemistry Chair McFadden’s renewed efforts to expel him from the Chemistry Department, a move which Complainant characterized as unfair. Joint Exhibit 45; Respondent’s Exhibit 7.

44. On June 4, 2006, four months after Complainant received a three-year National Science Foundation grant of \$423,000, Dean Quinn informed Complainant that the University was going to move his laboratory from the Merkert Chemistry Center to the Higgins Biology Building pursuant to the Chemistry Department’s “new space allocation policy” because of the multiple years during which he had no substantial external funding. Joint Exhibit 46. Dean Quinn also justified the move based on the “ruptured” relationships between Complainant and others in the Chemistry Department. *Id.*

45. Professor McFadden stepped down as Chair of the Chemistry Department in June of 2006 and Professor Amir Hoveyda assumed the role of Department Chair, effective July 1, 2006. Transcript II at 222, 224, VII at 1269. According to Dr. Garza, Professor Hoveyda had the “overwhelming” support of the Chemistry Department. Transcript V at 974. Professor Hoveda negotiated an agreement with Provost Garza that neither he nor the Chemistry Department would handle any issues pertaining to Complainant and that he (Professor Hoveyda) would not have to deal with Deans Quinn or Smyer. Transcript VII at 1269, 1292.

46. On June 9, 2006, Professor Larry McLaughlin and Chemistry Department Administrator Donna Ticchi emailed Provost Garza that, "Chemistry is eager to move Bill out of Merkert . . . as we embark on a new era of leadership . . . in our department. Bill's presence is an ongoing reminder of the dismal past . . . Amir [Hoveyda] has made it clear that he will not accept the chairmanship of Chemistry until [Complainant] is out of Merkert. It is the will of the Chemistry faculty that [Complainant] leaves Merkert, and the sooner that this is accomplished, the better for all parties." Joint Exhibit 48.
47. On June 12, 2006, Complainant wrote to Dean Quinn to protest his treatment by the school which he described as "the opposite direction relative to the way things were proceeding up until early this year" and stated his intention to bring in legal counsel. Joint Exhibit 49.
48. On June 27, 2006, Complainant received a letter from Dean Quinn stating that given Complainant's continuing "unproductive relationship" with the Chemistry Department, his office and lab were going to be moved into the Higgins Biology Building, although Complainant would continue to have access to certain facilities in Merkert Hall. Joint Exhibit 51. The letter also stated that Complainant's administrative needs would be handled by staff at Higgins and his annual salary would be determined by the Dean of the College of Arts and Sciences rather than the Chemistry Department Chair. Complainant was informed that he could not attend Chemistry Department faculty meetings, social functions, or recruitment activities. Id.
49. On the next day, Professors McLaughlin and Scott and Administrator Ticchi wrote to Provost Garza and others that, "The Armstrong office move must take place this summer.

The Chemistry Department considers this to be a top priority ... Moving Bill in August is enormously important to us.” Respondent Exhibit 8.

50. Professor McLaughlin, Chair of the Space Committee from 2002 to 2010, testified that Complainant’s lab space in Merkert was needed as an instructional lab for an increasing number of chemistry majors. Transcript II at 223. He stated that since Complainant’s lab had previously been an undergraduate teaching lab, it could be converted back to a teaching lab in order to accommodate new students. Chemistry Professor/ Space Committee member Mary Roberts supported this rationale by noting that Complainant’s research lab in Merkert was equipped with hoods and other items necessary for undergraduate teaching. Transcript IX at 1673, 1695, 1715-1716. Space Chair McLaughlin acknowledged that Professor Scott’s Merkert lab, like Complainant’s, was also a renovated teaching lab. Transcript X at 1946. Professor McLaughlin distinguished Professor Scott’s situation on the basis that his lab was larger than Complainant’s but did not explain why moving a smaller lab would be advantageous.

51. According to Dr. Garza, the terms of the June 27, 2006 letter from Dean Quinn to Complainant did not constitute a “further restriction of [Complainant’s] teaching or duties as a tenured faculty member” which, based on the parties’ June 13, 2002 agreement, required the acquiescence of both sides absent misconduct. Transcript V at 949. Dr. Garza testified that he took this position because the terms set forth in Dean Quinn’s letter did not inhibit Complainant’s teaching or eliminate his laboratory space in Higgins. *Id.* Father Leahy likewise testified that the terms of the June 27th letter were not restrictions on Complainant’s professional activities because he was still allowed to teach, had access to graduate students, and had a laboratory in which to perform research. Transcript XI at

1982-1983, 2040. Father Leahy stated that although he was not involved in the decision to move Complainant's office and lab, he did not view the prohibition on Complainant's attendance at Chemistry Department faculty meetings as a restriction on his performance as a tenured faculty member because it didn't constitute a restriction on teaching or research. Transcript XI at 2042- 2045. Father Leahy acknowledged that University Statutes do not explicitly permit a department chair to exclude a faculty member from attending faculty meetings but opined that "in certain circumstances" a department chair could preclude a faculty member from attending such meetings under the "latitude" given to a department chair. Transcript XI at 1243, 1261.

52. According to Respondent's University Statutes, department chairs are responsible for the administration of all matters, academic or otherwise, including the conducting of appropriate meetings. Joint Exhibit 111 (University Statutes, Chapter I, section 14 at p. 5). The Statutes list as faculty responsibilities: sharing in the formulation of academic policy, making planning decisions for their departments, and participating in departmental meetings. Joint Exhibit 111 (University Statutes, Chapter I, section 15 and Chapter II, section 9 at p. 13).

53. Complainant testified that the proposed move of his office and lab was a "huge obstacle" in being able to do his work because it isolated him from the rest of the Chemistry Department, branded him as a "pariah," undermined his ability to attract graduate and postdoctoral students to work on his National Science Foundation grant, and adversely impacted his research group's morale. Transcript III at 538-542. According to Complainant, having a lab in Higgins required the transport of chemical compounds from Higgins to Merkert for measurements and for handling in a "dry box" environment.

Transcript III at 542, 545. Complainant claimed that the proposed lab space in Higgins lacked proper ventilation, student desks, splash guards, and storage. Transcript III at 543-544. He testified that being prohibited from attending faculty meetings was “awful” because it reversed his efforts to reintegrate into the Chemistry Department and placed him in “limbo.” Transcript III at 553.

54. By letter dated July 17, 2006, Complainant’s then-lawyer wrote to Respondent charging a breach of the parties’ 2002 agreement, accusing Boston College of discrimination, and asking that Complainant’s office and lab not be moved. In response to this letter, Professor Larry Scott wrote to Provost Garza that the “Armstrong affair was mishandled four years ago” and that “nothing has changed for us over the years.” Joint Exhibit 55.

55. In August of 2006, Complainant traveled to Russia to give a chemistry paper. He returned on August 28, 2006, was jet-lagged on August 29th, and on August 30th was at a hospital for the surgery of his son who was suffering from a serious medical condition. Transcript IV at 764, VI at 1130. While he was away, his wife received a notice dated August 18, 2006 stating that her husband’s office was going to be moved on August 30th. Joint Exhibit 56. She wrote to Space Committee members McLaughlin and Scott and to Building Manager Madden asking that the move be delayed due to her husband being out of the country and their son being scheduled for surgery, but Boston College proceeded with the move. Joint Exhibit 58; Transcript VI at 1132-1133, 1150, VIII at 1470-1472. On August 30th, Complainant received a call at the hospital from his graduate student who stated the people were coming into his office and packing it up. Transcript III at 573, VI at 1133. Complainant testified that he had no input into how his items were being packed up and that the situation distracted him and his wife from their son’s surgery. Transcript

III at 574-575. According to Complainant, he is the only tenured professor in the Chemistry Department who does not have an office in the Merkert Chemistry Center.

Transcript IV at 657, V at 871.

56. Professor Scott testified that Complainant's office was moved to provide room in Merkert for two adjunct faculty members who were teaching freshman chemistry courses in the fall of 2006 and stated that the move couldn't be postponed. Transcript XI at 2103. Professor Scott stressed the importance of having faculty in established offices from "day one" of the semester in order to meet with students about changing sections and dropping or adding courses. Transcript XI at 2099-2100.
57. Complainant's then-attorney wrote another letter to Boston College on September 4, 2006 laying out disability issues. Complainant's Exhibit 3.
58. Professor Scott and Chemistry Department Administrator Donna Ticchi co-signed an e-mail to Complainant on September 6, 2006 warning him that his laboratory was also going to be relocated to Higgins. Complainant's lab was not moved at that time because additional instructional lab space wasn't then needed and because Complainant's research lab in Merkert 113 was being used by one of Complainant's graduate students, Wayne Lo, who was in his final year of graduate school. Transcript XI at 2107-2108.⁷
59. On January 8, 2007, Complainant filed a grievance with the Faculty Grievance Committee regarding his treatment by the Chemistry Department. Joint Exhibit 68; Transcript IV at 626.
60. On April 18, 2007, Complainant filed a charge of disability discrimination with the MCAD against Boston College and Professor Amir Hoveyda.

⁷ A subsequent email by Donna Ticchi, Chemistry Department Administrator, noted that, "Basically, the reason that we waited so long (over one year) to move Bill's lab after his office was to accommodate Wayne Lo." Joint Exhibit 90.

61. On June 20, 2007, the Grievance Committee issued a report which concluded that Boston College, under the leadership of Provost Garza, should reintegrate Complainant into the Chemistry Department by taking steps such as changing the designation of his advanced laboratory research courses from biology to chemistry courses,⁸ restoring his name on a plaque in the Merkert Chemistry Center that lists members of the Chemistry Department, restoring his name to a brochure of Chemistry professors containing faculty profiles, including him on Chemistry faculty e-mails, permitting him to attend Chemistry Department faculty meetings, allowing him to engage in recruitment activities, moving his office back to Merkert, and allowing him to participate in faculty deliberations. Joint Exhibit 71; Transcript IV at 644-652, VIII at 1496-1500. Except for re-designating his courses as Chemistry courses, none of the suggestions were implemented. Transcript IV at 641-652, 664; V at 926-927.
62. On the day following issuance of the Grievance Committee report, Professor Hoveyda commented in correspondence with Provost Garza that, "You and I are UNIQUE in this place filled with Madigans and Armstrongs and Clarkes. But there is no point in us talking unless you have one or the other of the following pieces of news for me and my department: 1. Armstrong is fired. 2. Armstrong is retiring. There is NO third option for me. Respectfully, Amir."
63. According to Dr. Garza, the Grievance Committee's report was only advisory. Transcript V at 942. Boston College President Father William Leahy concurred that a Grievance Committee recommendation is advisory but stated that such recommendations are taken seriously by the school. Transcript XI at 1975.

⁸ Prior to the report, Complainant's courses were, at times, listed as biology courses. Transcript VIII at 1496. The change in course designation eventually took place. Transcript IV at 687.

64. Dr. Garza testified that there is no “right” to attend a faculty meeting; rather it is an “earned collegial activity.” Transcript V at 943. Dr. Garza testified that a Department Chair, with the backing of a majority of his faculty, has the authority to exclude a faculty member from department meetings. Transcript V at 944.
65. On June 26, 2007, Professor Scott e-mailed Provost Garza that the full professors of the Chemistry Department agreed that the situation could only be resolved by terminating Complainant’s appointment with the University. Joint Exhibit 77; Transcript VII at 1322. Professor Scott denied that the proposed termination was in retaliation for the filing of a discrimination complaint and claimed that it was the “logical next step” after the parties failed to achieve a peaceful coexistence. Joint Exhibit 77. Professor Scott testified that it was imperative to move Complainant out of Merkert because he was “disruptive.” Transcript XI at 2135, 2137. He also acknowledged that Professor Hoveyda would not accept the chairmanship of the Chemistry Department as long as Complainant was there. Id.
66. Professor Hoveyda wrote to Provost Garza in response to the issuance of the Grievance Committee report. Professor Hoveyda complained about the “incompetence of various University officials and their highly misplaced values.” Joint Exhibit 76; Transcript V at 932. He threatened to refuse the chairmanship of the Chemistry Department (“I shall return to my shell”) and requested that his name be removed from the Chemistry Department’s website unless the University took a stand in his favor. Joint Exhibit 76. Professor Hoveyda testified at the public hearing that he would resign immediately as chairperson of the Chemistry Department if Complainant’s office and/or lab returned to Merkert and that he would refuse to attend faculty meetings. Transcript VII at 1305, 1307.

67. Chemistry Department Administrator Donna Ticchi wrote to Provost Garza on July 10, 2007 that Complainant had only been seen at his Merkert lab on a few occasions during the previous year and did not appear to be actively supervising his research group. Joint Exhibit 78.
68. Provost Garza responded to the Chair of the Faculty Grievance Committee on July 17, 2007. Joint Exhibit 79. He criticized the report for not focusing on Complainant's misconduct and disagreed with the report's assertion that Complainant had a right to attend faculty meetings. However, Grievance Committee Chair Arthur Madigan testified that based on his thirty-five years as a faculty member at Boston College and four years as Chair of the Philosophy Department, he "can't imagine the circumstances in which [he] would even think that [he] had the authority to exclude a colleague from a meeting." Transcript VIII at 1556.
69. Complainant wrote to the Grievance Committee on August 23, 2007 asking it to take further action on his grievance because the Grievance Committee's recommendations were not being implemented. Joint Exhibit 80.
70. At some point prior to September 26, 2007, the Space Committee met with the Undergraduate Studies Committee about the need for another teaching lab to accommodate increasing numbers of undergraduate chemistry students. Transcript X at 1860. The Space Committee determined that Complainant's research lab in Merkert 113 could be conveniently turned into an undergraduate teaching lab since it was originally used as a teaching lab, was never formally renovated into a research lab, and could be converted back into a teaching lab with only minor changes. Joint Exhibit 87; Transcript X at 1860. Space Committee Chair McLaughlin testified that he was not aware of Complainant's charge of disability

discrimination when the decision was made to convert Merkert 113 back into a teaching lab. Transcript X at 1889, 1891.

71. On September 26, 2007, the Chemistry Department Space Committee sent Complainant a letter stating that his lab space in Merkert would be converted into a teaching lab for the spring semester of 2008 in order to handle increased enrollment in the Chemistry program. The move was subsequently delayed, first until February/March of 2008, and thereafter until April/June of 2008, in order to accommodate Complainant's postdoctoral student Wayne Lo and because the Department did not have an immediate need for the space. Joint Exhibits 81, 84, 92 & 93; Transcript IV at 672, VI at 1086.
72. On October 19, 2007, Complainant submitted a written complaint to the Faculty Grievance Committee requesting that his original grievance be reopened due to noncompliance with the Committee's findings and recommendations. Transcript IV at 670. He did not inform the Chemistry Department about his petition to reopen his grievance.
73. Per letter of October 23, 2007, the Chemistry Department Space Committee informed Complainant that it was reassigning Merkert 113 as a teaching lab beginning in June of 2008 (the summer term) in order to meet increased enrollment in its general Chemistry program. Joint Exhibit 84.
74. Complainant wrote to Space Committee Chair McLaughlin on December 21, 2007 that his proposed Higgins lab was not equipped with a sufficient number of fume hoods; that it lacked sufficient bench space; that it required traveling to Merkert in order to use the inert atmosphere glove box, x-ray diffractometer, mass spectrometer and NMR spectrometers; and that it necessitated the transport of hazardous chemicals from one building to another. Joint Exhibit 86.
86. Complainant charged that the move was in retaliation for his October 19, 2007 request that

his grievance be reopened. Id. Complainant asserted that moving his lab halfway through his 2006-2009 National Science Foundation grant was disturbing to his students and was devastating to him because it arrested his “comeback” on the first “solid” grant he had in years. Transcript IV at 678-679. Complainant described his proposed lab space in Higgins as a windowless office that may have been previously used as an instrument room for another lab and was insufficient to accommodate his instruments and materials unless they were downsized. Transcript X at 1876-1877, XI at 2121. The Space Committee responded that moving Complainant’s lab to Higgins was the “most efficient way” to increase laboratory teaching space in Merkert, did not interfere with Complainant’s access to instrumentation in Merkert, was not “unusual or disruptive” insofar as requiring travel between buildings, was not dangerous in regard to carrying chemicals between buildings, and provided sufficient space for Complainant’s research activities. Joint Exhibit 87.

75. In late January, 2008, Complainant sought to meet with Space Chair McLaughlin to oppose the planned move whereas Professor McLaughlin sought to meet with Complainant to implement the move, e.g. to identify chemicals for disposal, to identify how much storage space was needed for chemicals, and to identify which instruments “might go.” Respondent’s Exhibit 4. Professor McLaughlin asserted that the Higgins space was sufficient for Complainant’s research team, that only one fume hood was needed for Complainant’s team, and that carrying samples between the Merkert Chemistry Center and the Higgins Biology Building was “not a big deal.” Transcript X at 1885-1888.

76. Complainant filed a Motion to Amend the MCAD Charge of Discrimination on February 7, 2008 alleging that the notice of his lab being moved to the Higgins Biology Building was in

retaliation for requesting the Faculty Grievance Committee to reopen his grievance. Joint Exhibit 113. The amendment was allowed by the MCAD. Id.

77. In mid-2008, Boston College moved Complainant's lab out of the Merkert Chemistry Center and into the Higgins Biology Building during a period described by Complainant as a "critical time" in his research. Transcript IV at 682, VI at 1051, 1091; Joint Exhibits 95, 97.

Complainant's postdoctoral students, Wayne Lo and Shivalah Vaddypally, were still working in Complainant's lab. Transcript VI at 1104-1108. After the move, some of Complainant's lab equipment had to be stored off-site and Complainant had to destroy some of his chemicals because there wasn't adequate space for them in Higgins. Transcript VI at 1093. Complainant claims to be the only tenured Chemistry professor without a lab or office in the Merkert Chemistry Center and asserts that this situation undermines his ability to attract students to work on his research. Transcript IV at 653-657, 682, X at 1884; Joint Exhibits 86, 97.

Complainant's wife described his emotional state after the move as dejected and hopeless. Transcript VIII at 1430.

78. Professor Clarke testified that Complainant was excluded from the life of the Chemistry Department. Transcript III at 419. Professor Clarke stated that after Complainant's lab was moved to another building, he was distanced from Chemistry Department equipment, was forced to transport air sensitive compounds outside, and was deprived of chance encounters with colleagues and graduate students. Transcript III at 419-420.

79. On June 25, 2008, the Chair of the Faculty Grievance Committee wrote to Boston College President Leahy that the Committee believed the intent of the 2002 agreement between the school and Complainant was to facilitate Complainant's return to the Chemistry Department, and the Committee urged consideration of mediation to achieve conflict resolution. Joint

Exhibit 98; Transcript IV at 684, VII at 1203. President Leahy did not respond to the letter. Id. Complainant's wife testified that Complainant was "incredulous" and "defeated" about the school's failure to respond. Transcript VIII at 1432.

80. In March of 2010, David Quigley, then-Dean of the College and Graduate School of Arts and Sciences, notified Complainant that the Biology Department was reclaiming his lab space in the late summer of 2010 and that the school did not have any "bridge funding" available for him.

Joint Exhibit 101. Complainant's lab space in Higgins was subsequently extended for an additional period of time. Joint Exhibit 103.

81. On January 28, 2011, Complainant was notified about the smell of organic solvents emanating from his lab and about his allegedly improper labeling and storage of chemicals. Joint Exhibits 104-108; Transcript IV at 722, 726-727. The Chair of the Biology Department, Professor Thomas Chiles, took a video of Complainant's lab and asked that the University either shut down the lab or relocate it to a building designed for organic chemical use and storage. Joint Exhibit 104; Transcript IV at 729.

82. In or around the summer of 2011, the Biology Department informed Complainant that he had to vacate his lab/office in Higgins following the expiration of his National Science Foundation grant.⁹ Joint Exhibit 101; Transcript IV at 703-704, 707. As of that time, Complainant had not published any results from grant-related research. Transcript VI at 1114. When he told his postdoctoral students about the loss of guaranteed lab space, they left his lab and he was unable to recruit replacements which caused his research program to come to a halt. Complainant's Exhibit 4. Complainant asked Dean Quigley for lab space and an office in the Merkert Chemistry Building as well as bridge funding. Id. He was given new office space in Higgins

9. Complainant's National Science Foundation grant was funded for a three-year term from 2006-2009. He applied for a renewal of the grant in 2008 but the request was rejected. Transcript IV at 714. He then applied for two no-cost extensions which carried him through August 1, 2011. Transcript IV at 715.

but was told that he would not be given lab space unless he received another research grant.

Transcript IV at 709, 716-720, VI at 1115. As of the date of public hearing, Complainant did not have a research lab. Transcript VII at 1204.

83. As of June, 2013 when Provost Garza left Boston College,¹⁰ Complainant did not have an office or lab in Merkert, his name was omitted from Chemistry Department e-mails, he was prohibited from attending Chemistry Department faculty meetings, and he did not have the assistance of graduate or postdoctoral students. Transcript V at 937-938, 955.
84. Complainant testified that he feels completely "beaten down" as a result of his treatment by Respondent, is very demoralized, is in a state of limbo, and has no colleagues. Transcript IV at 658. Complainant testified that his situation at Boston College has adversely impacted his family life. Transcript IV at 659-660. He stated that he is ashamed that his office is not inside the Chemistry Department and has tried to hide its location from his sons who both attended Boston College. *Id.* at 660-661. He testified that his wife was greatly affected emotionally by his experience. Transcript IV at 662.
85. Complainant's salary in the 2002-2003 academic year (during which he sent the anonymous e-mails) was the same as that of the prior year: \$71,550. During the 2003-2004 academic year, he was paid \$72,000, a 0.629 % increase. During the 2004-2005 academic year, he was paid \$73,300, a 1.806% increase. During the 2005-2006 academic year, he was paid \$76,000, a 3.947% increase. During the 2006-2007 academic year, he was paid \$79,000, a 3.947 % increase. During the 2007-2008 academic year, he was paid \$81,370, a 3% increase. During the 2008-2009 academic year, he was paid \$81,370, a 0.000% increase (resulting from a faculty

¹⁰Provost Garza voluntarily left Boston College after seeking, but not obtaining, more authority in regard to the school's finances. Transcript XI at 2012-2013.

salary freeze). Transcript VII at 1217. During the 2009-2010 academic year, he was paid \$82,184, a 1% increase. During the 2010-2011 academic year, he was paid \$83,000, a 0.993% increase. During the 2011-2012 academic year, he was paid \$83,850, a 1.024% increase. During the 2012-2013 academic year, he was paid \$84,350, a 0.595% increase. During the 2013-2014 academic year, he was paid \$85,500, a 1.363% increase. Complainant's Exhibit 5. Complainant's average raise between 1999 and 2014 was 1.52%. *Id.* The three years during which he received the greatest salary increases were 2006-2009. Transcript VII at 1215.

86. Chemistry Associate Professor "G" was hired in 2006 or 2007. Transcript VII at 1330. In the 2013-2014 academic year he earned \$106,500 and in the 2014-2015 academic year he earned \$109,500. Transcript VII at 1331. Professor "G" has a research group of fourteen or fifteen graduate students, has large grants from the National Institutes of Health and the National Science Foundation, is the director of the Graduate Studies Committee, and is considered by Chemistry Chair Hoveyda to be an outstanding teacher of honors chemistry and biochemistry. Transcript VII at 1331-1332.

87. In order to continue to pay his legal bills, Complainant considered selling his home. Transcript IV at 699. The stress of his financial concerns negatively impacts his depression and bipolar illness. Transcript IV at 700.

III. CONCLUSIONS OF LAW

Retaliation

Chapter 151B, sec. 4 (4) prohibits retaliation against persons who have opposed practices forbidden under Chapter 151B or who have filed a complaint of discrimination. Retaliation is a separate claim from discrimination, "motivated, at least in part, by a distinct intent to punish or to rid a workplace of someone who complains of unlawful practices." Kelley v. Plymouth

County Sheriff's Department, 22 MDLR 208, 215 (2000), *quoting* Ruffino v. State Street Bank and Trust Co., 908 F. Supp. 1019, 1040 (D. Mass. 1995).

Respondent seeks to limit the scope of the retaliation claim to a single incident -- that Complainant's laboratory was moved to the Biology Building in response to his faculty grievance -- but such a framing of the issue is too narrow. While the amended charge filed with the MCAD on February 7, 2008 cites the transfer of Complainant's lab as evidence of retaliation, this allegation does not prohibit other evidence of adverse consequences arising from protected activity. In accordance with 804 CMR sec. 1.10 (6), the retaliation claim relates back to Complainant's initial charge of discrimination. It therefore rises or falls on all of the factual allegations set forth in Complainant's charge of discrimination, not just the allegation that Complainant's lab was moved after he asked that his faculty grievance be reopened.

Whether or not the evidence supports a retaliation claim is determined through the burden-shifting framework set forth in McDonnell Douglas Corp. v. Green, 411 Mass. 972 (1973) and adopted by the Supreme Judicial Court in Wheelock College v. MCAD, 371 Mass. 130 (1976). *See also* Abramian v. President & Fellows of Harvard College, 432 Mass. 107, 116 (2000); Wynn & Wynn v. MCAD, 431 Mass. 655 (2000). To prove a prima facie case of retaliation, Complainant must demonstrate that he: (1) engaged in a protected activity; (2) Respondent was aware that he had engaged in protected activity; (3) Respondent subjected Complainant to an adverse employment action; and (4) a causal connection exists between the protected activity and the adverse employment action. *See* MacCormack v. Boston Edison Co., 423 Mass. 652 n.11 (1996), *citing* Prader v. Leading Edge Prods., Inc., 39 Mass. App. Ct. 616, 617 (1996); Mole v. University of Massachusetts, 58 Mass. App. Ct. 29, 41 (2003); Kelley v. Plymouth County Sheriff's Department, 22 MDLR 208, 215 (2000).

Under M.G.L. c. 151B, s. 4(4), an individual engages in protected activity if he/she “has opposed any practices forbidden under this chapter or ... has filed a complaint, testified or assisted in any proceeding under [G.L.c.151B, s.5].” The request for an accommodation, alone, has also been held sufficient to constitute protected activity. See Wright v. CompUSA, Inc., 352 F. 3d 472 (1st Cir. 2003).

The parties’ 2002 and 2003 agreements do not reference a specific accommodation request, but they document the terms under which Complainant was able to return to his faculty position after treatment for his psychiatric disability. The agreements permitted Complainant to return to campus in 2003 following a year-long campus leave, psychiatric treatment, the administration of a battery of psychological tests, and an evaluation by an independent medical examiner concerning his fitness to return to work; following his return to campus, the agreements provided for a restricted course load for one year, oversight by a mentor, and a one-year cooling-off period during which Complainant’s office was to be located outside of Merkert and he could not attend faculty meetings. Any further restrictions on Complainant’s teaching or duties were to be by agreement or based on subsequent conduct. I conclude that these terms constitute accommodations allowing Complainant to resume his career notwithstanding his psychiatric disability and the hard feelings engendered by his aberrant behavior.

Complainant took steps to implement the accommodations cited above by seeking, unsuccessfully, to move his office back to the Merkert Chemistry Center at the conclusion of the 2003-2004 academic year, by seeking to attend a Chemistry Department faculty meeting in April of 2005, by again pursuing efforts to move his office back into the Merkert Chemistry Building in 2005 (successfully for a period of time), by announcing that he would begin to attend faculty meetings in 2006 (and attempting to do so in February of 2006), by voicing concerns in May,

2006 e-mails to Dean Smyer about Respondent's failure to implement the terms of the parties' agreements, and by protesting his treatment in a June, 2006 communication to Dean Quinn. The aforementioned steps were all motivated by a single goal: to implement the terms of the parties' agreements. If requesting an accommodation constitutes protected activity, surely seeking to implement accommodations resulting from Complainant's disability constitutes protected activity as well.

In addition to seeking implementation of the parties' 2002 and 2003 agreements, Complainant protested his discriminatory treatment in various communications over a two-year period. Complainant's lawyer accused Respondent of discrimination in a June, 2006 communication and laid out disability issues in a subsequent September, 2006 communication. Complainant thereafter filed a January, 2007 grievance with the faculty grievance committee, filed an April, 2007 charge of disability discrimination with the MCAD, made an October, 2007 request that the Faculty Grievance Committee reopen his grievance based on noncompliance with the Committee's recommendations, and amended his MCAD charge of discrimination in February of 2008 to add a retaliation charge. These efforts to obtain redress for discriminatory treatment constitute additional forms of protected activity of which Respondent was aware. The fact that some members of the Space Committee and/or the Chemistry faculty might not have known about each instance of protected activity does not detract from Respondent's institutional awareness.

In response to Complainant's implementation efforts and his continuing protests about discriminatory treatment, Respondent subjected Complainant to adverse action by systematically isolating him from the Chemistry Department. When Complainant sought to move back into the Merkert Chemistry Center at the conclusion of the 2003-2004 academic year, he was not

permitted to do so by Chemistry Chair McFadden. When Complainant sought to attend a Chemistry Department faculty meeting in April of 2005, faculty members left the room and Chemistry Chair McFadden told him to stop attending faculty meetings. During Complainant's subsequent attempt to attend a faculty meeting on February 6, 2006, Professor Hoveyda walked out of the room followed by other faculty members who thereafter voted to ban Complainant from all faculty meetings and to terminate his appointment in the Chemistry Department. Professor Hoveyda subsequently voiced his intention to refuse the chairmanship of the Chemistry Department as long as Complainant was a member and Provost Garza denied Complainant financial support for an undergraduate summer student. The administration packed up Complainant's office and moved it to Higgins on the day that his son was in surgery and subsequently transferred Complainant's lab to Higgins as well. The school arranged for Complainant's administrative needs and salary to be handled by non-Chemistry Department administrators and prohibited Complainant from attending Chemistry Department faculty meetings, social functions, and recruitment activities.

The actions listed above were highly irregular, hostile, and isolating. They establish that while Respondent was prepared to continue paying Complainant a salary and permit him to teach an introductory Chemistry course, the Chemistry Department would not tolerate Complainant's efforts to resume functioning as member of the Chemistry faculty. The Chemistry Department's response to Complainant's protected activity effectively put the brakes on a course of reconciliation and reintegration implemented by the Deans of the College of Arts and Sciences and President Leahy. As such, the Chemistry Department's actions were adverse reactions to Complainant's protected activity. See Leahy v City of Boston, 36 MDLR 64 (2014) (reassignment of fire fighter in response to charge of sexual harassment constitutes adverse

action); Magill v. Massachusetts State Police, 24 MDLR 355 (2002) (refusal to permit officer to transfer from one barracks to another constitutes an adverse action in retaliation for sexual harassment complaint).

Respondent argues that the aforesaid actions were not adverse responses to protected activity but, rather, discretionary steps taken by the Chair of the Chemistry Department. It acknowledges that the parties' 2002 agreement does not permit additional restrictions on Complainant's "teaching" and "duties" absent subsequent misconduct, but claims that this restriction does not apply to administrative matters such attendance at faculty meetings and the allocation of space. In support of this position, Respondent cites a University statute which grants authority to department chairs over the conduct of departmental meetings and a space allocation policy which permits the administration to reclaim lab space from faculty members who are without external funding over multiple years.

Professors McFadden and Hoveyda were undeniably entitled to exercise administrative authority over the Chemistry Department while they served as departmental chairs. Such authority, however, does not vest in the administration unlimited power to take unilateral action. University statutes characterize the participation of faculty members in departmental meetings as part of their service responsibility to the school. Since participation in departmental meetings is a faculty responsibility, the Chemistry Department was not free to unilaterally curtail Complainant's participation in this activity. President Leahy acknowledged that University statutes do not explicitly permit such exclusion. Professor Madigan, a tenured professor at Boston College for thirty-five years and former Chair of the Philosophy Department, testified that he "can't imagine the circumstances in which [a Department Chair] would even think that

[he] had the authority to exclude a colleague from a meeting.” According to Dr. Lippard, Chair of MIT’s Chemistry Department for ten years, such an action is “unheard of.”

Turning to the issue of allocating office and laboratory space, it is noteworthy that Space Committee Chair McLaughlin is on record stating that all the research labs of a department’s faculty should be kept together. According to Dr. Lippard, the transfer of Complainant’s office and lab to a different building was “devastating.” Complainant himself testified credibly that the move of his office and lab branded him as a “pariah,” undermined his ability to attract graduate and postdoctoral students to work on his research, negatively impacted the morale of his research group, and caused a host of logistical problems.

I conclude that the adverse actions experienced by Complainant in regard to being banned from Chemistry Department faculty meetings and being transferred to Higgins were motivated primarily by the exercise of protected activity rather than by legitimate administrative concerns. It is not coincidental that the day following Complainant’s attendance at the Chemistry Department’s February 6, 2006 faculty meeting the faculty voted to terminate Complainant’s appointment to the Department. Provost Garza acknowledged that the faculty’s willingness to tolerate Complainant’s presence began to unravel in reaction to Complainant’s efforts to reclaim his place as a member of the Chemistry Department. The cause and effect relationship between Complainant’s reintegration efforts and the Chemistry Department’s hostile responses satisfies the final element of a prima facie case of retaliation based on the inferential method.

The inference of a causal connection is reinforced, moreover, by expressions of retaliatory animus by faculty members which ““if believed, results in an inescapable, or at least highly probable, inference that a forbidden bias was present in the workplace.”” Wynn & Wynn.

PC v. MCAD, 431 Mass. 655, 667 (2000) *quoting* Johansen v. NCR Comten, Inc., 30 Mass.

App. Ct. 294, 300 (1991); Fountas v. Medford Public Schools, 22 MDLR 264, 269 (2000).

Examples of such expressions include Professor Hoveyda writing in a 2005 e-mail that Complainant's attendance at Chemistry Department faculty meetings would be "out of the question" when he became Chairperson; the Chemistry faculty voting to ban Complainant from all future Chemistry Department faculty meetings and to terminate Complainant's appointment in the Chemistry Department; Provost Garza stating that the school's administrators could not force the Chemistry Department to accept Complainant as a colleague, "nor would it be wise to try;" Space Committee members e-mailing the Provost that "Chemistry is eager to move Bill out of Merkert . . . as we embark on a new era of leadership . . . in our department;" Professor Hoveyda commenting to Provost Garza that, "there is no point in us talking unless you have one or the other of the following pieces of news for me and my department: 1. Armstrong is fired. 2. Armstrong is retiring. There is NO third option for me;" and Professor Scott characterizing the termination of Complainant's appointment with the University as the "logical next step." It is noteworthy that the aforementioned statements were not made at the time of Complainant's original transgressions in 2002 but, rather, in 2005 when Complainant was successfully managing his disability and sought to implement the terms of the parties' 2002 and 2003 reintegration agreements. This timing indicates that the faculty and administration actively opposed Complainant's efforts to reintegrate into the Chemistry Department and responded to his efforts with retaliatory animus. The sentiments expressed by the Chemistry faculty approach, if not constitute, direct evidence of retaliation. At a minimum they combine with the inferences set forth above to establish a prima facie case of retaliation.

Having established a prima facie case of retaliation, the burden shifts to Respondent to establish that its actions were legitimate and nondiscriminatory. See Blare v. Huskey Injection Molding Systems Boston Inc., 419 Mass. 437, 441-442 (1995) *citing* McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973) (under the inferential methodology, Respondent, at the second stage of proof, must articulate a legitimate, nondiscriminatory reason as the predominant basis for its action, supported by credible evidence). Respondent presents several non-retaliatory reasons to justify the Chemistry Department's stance in distancing itself from Complainant. First and foremost it cites a "breach of trust" occasioned by Complainant's 2002 anonymous e-mails. Such a position is supported by case law which makes clear that misconduct, even though caused by mental health issues, need not be tolerated by an employer. See Mammone v. Pres. & Fellows of Harvard College, 446 Mass. 657 (2006).

There can be no doubt that Complainant's anonymous e-mails constituted grossly inappropriate behavior, were outrageous in content, and were cowardly in their method of transmission. Faculty members had every right to be offended by and to seek to distance themselves from Complainant. In response to Complainant's misconduct in 2002, Respondent could have taken steps to remove Complainant as a tenured faculty member.

The record establishes, however, that Respondent, under the leadership of University President Father Leahy, opted for a redemptive rather than punitive approach to Complainant's mental health struggles. Respondent acknowledged Complainant's disability as the cause of his 2002 misconduct and extended to him the opportunity to gain control over his disability through treatment. In testifying about his approval of the parties' 2002 and 2003 reintegration agreements, Father Leahy explained that he permitted Complainant to return to campus because

he “had difficulties in his life, obviously under great stress . . . [and] . . . I believe people can make mistakes and recover from them.”

For several years after the execution of the 2002 and 2003 agreements, the Chemistry faculty permitted matters to take the course charted by the Deans of the College of Arts and Sciences and approved by the President. Pursuant to the reintegration agreements, Chemistry Chair McFadden permitted Complainant’s office to be moved back to Merkert in 2005, and he allowed Complainant to attend a 2005 faculty meeting. As Complainant pushed for greater implementation of the parties’ agreements, however, the Chemistry Department’s resistance also increased. This occurred despite the absence of any inappropriate behavior by Complainant after returning from leave. The Chemistry faculty, in effect, punished Complainant for seeking to enforce the terms of the reintegration agreements which constituted an accommodation to his disability. Such action, in my judgment, constitutes retaliation.

According to members of the Chemistry faculty and Space Committee, the motivation for moving Complainant’s office and laboratory out of Merkert following his attempt to attend faculty meetings in 2006 was not retaliatory but, rather, dictated by space considerations. Were that the real motivation, it might serve as a legitimate and non-retaliatory basis for refuting the prima facie case, but the evidence establishes that it was secondary to the Chemistry Department’s desire to isolate and punish Complainant for seeking to enforce the reintegration agreements. It is noteworthy that Complainant wrote to the Grievance Committee on August 23, 2007 charging that its recommendations were not being implemented and within several weeks, the Space Committee met with the Undergraduate Studies Committee about the need to reclaim a teaching lab to accommodate increasing numbers of undergraduate chemistry students. Professor Scott’s research lab in Merkert was not reclaimed as undergraduate teaching space even though

his research lab was also a former teaching lab and larger in size than Complainant's. It is also noteworthy that Complainant's office was moved out of Merkert in order to provide office space for two adjunct faculty members teaching freshman chemistry courses. Such action raises the question of why adjunct faculty took precedence over a tenured professor who was also teaching a Chemistry course. Based on the foregoing, I conclude the Chemistry Department was primarily motivated to eject Complainant's office and lab from the Merkert Chemistry Center because of his protected activity. See Lipchitz v. Raytheon Co., 434 Mass. 493, 501 (2001) (circumstantial evidence sufficient to show that Respondent's proffered explanation covered up a discriminatory motive which was the determinative cause of the adverse employment action). Accordingly, Respondent has failed to refute Complainant's prima facie case of retaliation.

IV. REMEDIES AND DAMAGES

A. Lost Wages and Benefits

Chapter 151B provides for monetary restitution to make a victim whole, including the same types of compensatory remedies that a plaintiff could obtain in court. See Stonehill College, 441 Mass at 586-587 (Sossman, J. concurring) *citing* Bournewood Hosp., Inc. MCAD, 371 Mass. 303, 315-316 (1976).

Complainant's salary is substantially lower than his cohort in the Chemistry Department. There is evidence that his productivity is likewise lower but this lack of productivity may be attributed, at least in part, to retaliatory treatment which denied Complainant appropriate office space, lab space, and teaching opportunities. In compensation therefore, I award back pay in an amount that equates Complainant's salary from 2003 to present to that of the next lowest paid tenured associate professor in the Chemistry Department. In addition, Complainant's office and

lab shall be transferred forthwith to the Merkert Chemistry Center, and Complainant shall be permitted to participate in Chemistry Department faculty meetings.

B. Emotional Distress Damages

Upon a finding of unlawful discrimination, the Commission is authorized, where appropriate, to award damages for the emotional distress suffered as a direct result of discrimination. See Stonehill College v. MCAD, 441 Mass. 549 (2004); Buckley Nursing Home v. MCAD, 20 Mass. App. Ct. 172, 182-183 (1988). An award of emotional distress damages must rest on substantial evidence that is causally-connected to the unlawful act of discrimination and takes into consideration the nature and character of the alleged harm, the severity of the harm, the length of time the Complainant has or expects to suffer, and whether Complainant has attempted to mitigate the harm. See Stonehill College v. MCAD, 441 Mass. 549, 576 (2004). Complainant's entitlement to an award of monetary damages for emotional distress can be based on expert testimony and/or Complainant's own testimony regarding the cause of the distress. See Stonehill College v. MCAD, 441 Mass. 549 (2004); Buckley Nursing Home v. MCAD, 20 Mass. App. Ct. 172, 182-183 (1988). Proof of physical injury or psychiatric consultation provides support for an award of emotional distress but is not necessary for such damages. See Stonehill, 441 at 576.

Complainant testified convincingly that he feels completely "beaten down" as a result of his treatment by Respondent, is very demoralized, is in a state of limbo, is isolated and without colleagues, and feels that he continues to be punished for past behavior caused by psychiatric illness that is now controlled. Complainant is the only active, tenured Chemistry professor without a lab or office in the Merkert Chemistry Center. His wife described his emotional state after his lab was moved out of Merkert as dejected and hopeless. Complainant asserts that this situation undermines his ability to attract students to work on his research.

Complainant testified convincingly that his situation at Boston College has adversely impacted his family life. He stated that he is ashamed that his office is not inside the Chemistry Department and has tried to hide its location from his sons who both attended Boston College. He described his wife as greatly affected emotionally by his experience. In order to continue to pay his legal bills, Complainant considered selling his home. The stress of his financial concerns negatively impacted his depression and bipolar illness.

After considering all the factors contributing to Complainant's emotional distress, I conclude that Complainant is entitled to \$125,000.00 in emotional distress damages.

V. ORDER

Based on the foregoing findings of fact and conclusions of law and pursuant to the authority granted to the Commission under G. L. c. 151B, sec. 5, Respondent is ordered to:

- (1) Cease and desist from all acts of retaliation;
- (2) Pay Complainant the differential, beginning in the 2003/2004 academic year, between his salary and that of the next lowest paid tenured associate professor, with interest at the rate of twelve per cent per annum, and continue to do so until Complainant has been reinstated into an office and lab space in Merkert and is permitted to teach chemistry courses commensurate with his rank; and
- (3) Pay Complainant the sum of \$125,000 in emotional distress damages with interest at the rate of twelve per cent per annum.

This decision represents the final order of the Hearing Officer. Any party aggrieved by this Order may appeal this decision to the Full Commission. To do so, a party must file a Notice of Appeal of

this decision with the Clerk of the Commission within ten (10) days after the receipt of this Order and a Petition for Review within thirty (30) days of receipt of this Order.

So ordered the 1st day of July, 2015.

A handwritten signature in black ink, appearing to read "Betty E. Waxman", with a long, sweeping horizontal line extending to the right.

Betty E. Waxman, Esq.,
Hearing Officer